

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF THE REQUEST |) | |
| FOR REVIEW BY: |) | CHARGE NO.: 2009CN1953 |
| |) | |
| LINDA WALL |) | ALS NO.: 09-0465 |
| |) | |
| Petitioner. |) | |

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Rozanne Ronen, presiding, upon the Petitioner's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009CN1953, Linda Wall ("Petitioner"); and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request and supporting materials, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF JURISDICTION

In support of which determination the Commission states the following findings of fact and reasons:

1. On December 2, 2008, the Petitioner filed a charge of employment discrimination with the Respondent against Arthur Weber c/o Estate of Arthur Weber². In her charge, she alleged that Arthur Weber, now deceased, sexually harassed her, in violation of Section 2-102(D) of the Illinois Human Rights Act (the "Act"). On July 20, 2009, the Respondent dismissed the Petitioner's charge for Lack of Jurisdiction based on its determination that Arthur Weber was not the Petitioner's employer at the time of the alleged violation. On August 24, 2009, the Petitioner filed this timely Request.
2. RespiteCare, Inc. ("Respite") provides non-medical personal care to seniors in their homes and assists seniors in conducting errands outside their homes. During the time alleged in the charge, Respite employed the Petitioner as a Home Health Services Assistant ("Assistant"). Respite assigned the Petitioner non-medical duties and was responsible for supervising her.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

² In the charge, the Petitioner purports to assert her claim against Arthur Weber c/o Estate of Arthur Weber because Arthur Weber is now deceased. However, there is no evidence in the file that an Estate exists, or that there has been a duly appointed agent authorized to act on behalf of the deceased.

The Petitioner's duties included helping Respite's clients with dressing, bathing, attending appointments, errands and other non-medical care. Respite paid the Petitioner's wages.

3. On September 19, 2007, Arthur Weber (the "Client") signed a contract with Respite to provide him with the services of an Assistant. Respite assigned the Petitioner to the Client as his Assistant.
4. In her charge, the Petitioner alleged that from November 2007 until June 2008, while she was assigned to the Client as his Assistant, the Client sexually harassed her by: (1) blowing kisses at her; (2) attempting to grab her, and (3) writing sexually offensive notes to her.
5. In her Request, the Petitioner argues the Respondent's dismissal was improper because the Client was her "joint-employer," in conjunction with Respite. The Petitioner argues various common-law factors, when applied to this case, should lead to a determination that the Client jointly employed the Petitioner.
6. The Client responded to the Petitioner's charge by submitting a copy of the signed contract between Respite and the Client. The contract is entitled: "RespiteCare, Inc. Care in the Home Health Services Financial Agreement." The contract contains the following provision:

Non-Solicit Agreement: *The Client agrees not to employ either directly, indirectly, or thru any other service provider, any employee provided to the Client by RespiteCare/CCHS at any time during which the Client is receiving service by said employee of RespiteCare/CCHS and for 6 months following the completion of service.*

Conclusion

The Commission's review of the Respondent's investigation file leads it to conclude the Respondent properly dismissed all counts of the Petitioner's charge for Lack of Jurisdiction.

The Commission finds the Petitioner did not have an employer-employee relationship with the Client during the time of the alleged violation. The Commission has previously held that a client of a temporary service agency is not an "employer" when it neither pays the worker nor controls the terms or conditions of the employment relationship with the temporary services agency. Tyrone Franklin and Flex N; Gate, 1997 WL 812495, Charge No. 1996SF0504 (December 10, 1997).

In the Petitioner's case, the Client did not pay the Petitioner nor did he control the terms and conditions of the Petitioner's employment relationship with Respite.

Furthermore, it is clear from the Client's contract with Respite that at all times, the Petitioner was understood by both parties to be solely Respite's employee. The contract explicitly precluded the Client from employing one of Respite's employees, either directly or indirectly, while Respite's employee was providing services to the Client. The contract thus expressly limits the employer-employee relationship solely between Respite and the Petitioner, and the Petitioner failed to produce evidence to the contrary.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Arthur Weber c/o Estate of Weber as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

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Entered this 24th day of February 2010.

Commissioner Sakhawat Hussain

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen